

Decision 01-12-008 December 11, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Approval of Year 2001 Energy Efficiency
Programs, in Compliance with Ordering
Paragraph 93 of Decision 00-07-017.

Application 00-11-037
(Filed November 15, 2000)

And Related Matters.

Application 00-11-043
(Filed November 15, 2000)
Application 00-11-044
(Filed November 15, 2000)
Application 00-11-045
(Filed November 15, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants The Utility Reform Network (TURN) an award of \$53,365.42 in compensation for contributions to Decision (D.) 01-01-060. That decision addressed applications by four investor-owned utilities seeking approval for energy efficiency programs, budgets and incentive mechanisms for program years 2000 and 2001.

1. Background

Following the filing of the utility applications in September 1999, and after extensive discovery, hearings and pleadings, the Commission issued D.00-07-017. That decision found that the utilities had not provided sufficient information to demonstrate compliance with commission directives. The

Commission authorized programs for year 2000 and ordered the utilities to file new applications for year 2001.

As part of the new applications, eight workshops were conducted in September and October of 2000 to identify issues and to expedite processing of the applications for year 2001. TURN participated in workshops related to cost-effectiveness analysis, residential program design and performance incentive mechanisms. Several of TURN's recommendations regarding escalator values for cost-effectiveness calculations and performance milestones were adopted by Administrative Law Judge (ALJ) Rulings that provided direction to the utilities for their 2001 applications.

The utilities filed their new applications on November 15, 2001. TURN protested the applications and sent letters to PG&E and the service list detailing its recommendations for changes to residential programs. After a prehearing conference and a round of procedural comments, ALJ Bytof issued a proposed decision that approved 2001 programs on an interim basis, increased the target energy and demand savings, and ordered further proceedings regarding program design issues. Assigned Commissioner Lynch issued an alternate decision that was substantially similar, except that it gave final approval for 2001 applications and provided guidelines for voluntary program modifications without further hearings.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information

regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

TURN filed an NOI to claim compensation in this proceeding as required by § 1804(a). ALJ Bytof issued a ruling on February 14, 2001, finding TURN eligible for compensation in this proceeding.

4. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways.¹ It may offer a factual or legal contention upon which the Commission relied in making a decision.² Or it may advance a specific policy or procedural recommendation that the Commission adopted.³ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁵

In this proceeding, TURN presented expert testimony addressing appropriate escalators to account for the financial impact of demand reduction upon the market clearing price of energy. The Commission adopted TURN's recommendations for on-peak escalator values, as well as other TURN assumptions used to develop forecasted gas prices, future demand growth, the cost of emission reduction credits and the availability of imports from out-of-state generating resources.

TURN participated in workshops and submitted comments on the issue of milestones and shareholder incentives. TURN recommended that approximately

¹ Pub. Util. Code § 1802(h).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

80% of the milestones be based on net demand and/or energy savings, a recommendation cited approvingly by the Commission. TURN also made recommendations designed to increase market penetration of residential appliance programs, including increased incentives for high-efficiency air conditioning equipment, consolidated delivery of residential programs, and expansion of appliances covered by rebate programs. Most of these recommendations were adopted by the Commission.

TURN also recommended an increase in direct rebate programs, a recommendation reflected in the Commission's decision in D.01-01-060. TURN also made recommendations intended to reduce residential bills through greater energy conservation and reduced market clearing prices.

In sum, the Commission adopted TURN's recommendations on several major issues. TURN's participation did not duplicate the showings of other parties. We find that TURN has demonstrated that it made a substantial contribution to D.01-01-060.

5. The Reasonableness of Requested Compensation

TURN requests compensation for all consultant expenses, all direct expenses and approximately 85% of attorney fees, for a total request of \$53,365.42.

For attorney time, Marcel Hawiger claims 81.53 hours at an hourly rate of \$185 for a total of \$15,083.05. Hours claimed were reduced for work during the application phase and compensation-related phase.

Consultant expenses totaled \$36,731.25. William B. Marcus claimed 2.5 hours at a rate of \$160; Jeffrey Nahigian claimed 192.25 hours at a rate of \$100, and Cynthia Mitchell claimed 148.75 hours at a rate of \$115.

Direct expenses totaled \$1,551.12, with the bulk of it related to postage and copying costs.

5.1 Hours Claimed

TURN discounts the hours of its attorney in recognition that the Commission did not adopt all of TURN's recommendations. With these adjustments, the hours TURN claims are reasonable. As TURN observes, the Commission has granted TURN compensation for all of its claimed costs even in cases where the Commission did not adopt all of TURN's recommendations. D.93-10-074 found that full compensation was justified because TURN allowed the Commission to consider "a broad range of well-developed policy options necessary to make a fully informed decision." For the same reason, we find TURN's request to be a reasonable one in this case.

TURN also appropriately breaks down time spent on various issues and activities.

5.2 Hourly Rates

Section 1806 requires the Commission to compensation eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."⁶

TURN seeks compensation for Marcel Hawiger at the same rate sought in earlier decisions in Investigation 99-07-003 and Application (A.) 00-10-029. Although a significant amount of attorney work was conducted in 2001, TURN requests compensation at the same \$185 hourly rate that applied in the year 2000. We agree that the attorney rate requested is reasonable, and we adopt it.

⁶ Pub. Util. Code § 1806.

TURN seeks an hourly rate of \$160 for consultant William B. Marcus and \$100 for consultant Jeffrey Nahigian. These rates represent a \$10 increase for Marcus and a \$5 increase for Nahigian over the approved 1999 rates, increases that TURN states are reasonable for professional consulting services. TURN notes that the rates are less than those approved for similar consultants in A.92-03-043 and other cases. TURN has shown that the rates are reasonable, and we adopt them. TURN requests an hourly rate of \$115 for Cynthia K. Mitchell, stating that the rate is consistent with awards made to other experts with comparable experience. TURN has made a sufficient showing of the reasonableness of this rate, and we adopt it.

5.3 Other Costs

TURN claims \$1,551.12 for costs relating to photocopying, postage and related administrative activities, a reasonable sum which we adopt here.

6. Award

We award TURN \$53,365.42 for contributions to D.01-01-060. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed this compensation request (June 20, 2001) and continuing until a utility makes full payment of its share of the award.

7. Allocation of Award Among Utilities

The award granted today should be paid pursuant to Pub. Util. Code § 1807. As we did in D.00-11-002, we will assess responsibility for payment in accordance with the respective 1999 California jurisdictional revenues of Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and San Diego Gas & Electric Company.

Waiver of Comment Period

This is a decision on a request for compensation pursuant to Pub. Util. Code § 1801 et seq.; accordingly under Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. TURN timely requests compensation for contributions to D.00-07-017 as set forth herein.
2. TURN requests hourly rates for its attorney and consultant that have already been approved by the Commission or which are reasonable under the circumstances.
3. The miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.
2. TURN should be awarded \$53,365.42 for contributions to D.01-01-060 in these proceedings.
3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$53,365.42 as set forth herein for substantial contributions to Decision 01-01-060.

2. The award should be paid pursuant to Pub. Util. Code § 1807 and shall be paid by Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and San Diego Gas & Electric Company based on the utilities' respective 1999 California jurisdictional revenues. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on June 20, 2001, and continuing until the utility has made full payment of its share of the award.

3. These proceedings are closed.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners